IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

W.A.Nos.380 and 381 of 2006

M/s.Nova Films & Paper Manufacturing Company
B-67, Industrial Estate
Sedarapet
Pondicherry-604 011, rep. By
its Partner, Mr.Sanjeev Arora .. Appellant in both appeals/Petitioner

versus

The Income Tax Officer
Ward I(1), Pondicherry. ..Respondent in both appeals/Respondent

PRAYER: W.A.Nos.380 and 381 of 2006 are filed under Clause 15 of the Letters Patent against the order of a learned single Judge of this Court dated 20.3.2006 in W.P.Nos.7676 and 7677 of 2006 writ of certiorari calling for the records of the respondent in his proceedings in G.I.R.PAN.4380/AACFN4778Q dated 14.02.2006 for the Assessment year 2002-2003, 2001-2002 respectively and quashing the same.

For appellant : Mr.V.Ramachandran
Senior Advocate
for Dr.Anita Sumanth

For Respondent : Mrs.Pushya Sitaraman
Senior Standing Counsel for
Income Tax

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JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

These writ appeals are against the order of the learned single Judge in W.P.Nos.7676 and 7677 of 2006 dated 20.3.2006, wherein, the appellant herein challenged the orders of assessment for the assessment years 2002-03 and 2001-02 respectively. Learned single Judge, referring to the decision reported in (2005) 2 MLJ 246 (M/S.NIVARAM PHARMA PRIVATE LIMITED Vs. THE CUSTOMS, EXCISE AND GOLD (CONTROL) APPELLATE TRIBUNAL, SOUTH

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REGIONAL BRANCH AND OTHERS), dismissed the writ petitions on the ground of availability of alternative remedy. Aggrieved of this, the assessee/writ petitioner has preferred these writ appeals, contending that when the proceedings taken were totally without jurisdiction, such a jurisdictional error could be corrected under Article 226 of the Constitution of India.

2. Learned senior counsel appearing for the appellant submitted that although an effective alternative remedy by way of an appeal is available, yet, an appellate authority under the Act was most likely to follow the judgment relied on by the assessing authority for the purpose of passing the assessment. This would be to the detriment of the appellant, since, according to the counsel, the same was not applicable to its case. He submitted that the assessee's case was directly covered by the decision of the High Court and the Supreme Court and that they did not require investigation of complicated facts.

3. We do not agree with the contention put forth, as stated above. A perusal of the order and the other materials enclosed in the paper book clearly show that the claim of the assessee requires investigation into the facts that, in any event, when it could not be denied that the appeal remedy is an effective and efficacious remedy, on the mere allegation that the appellate authority may follow the decision relied on by the assessing authority, is no ground for invoking the jurisdiction under Article 226 of the Constitution of India. In the circumstances, we do not find any merit in the submission of the learned senior counsel to interfere with the orders of assessment.

4. In this connection, we refer to the decision of a Division Bench of this Court reported in 279 ITR 342 (DR.K.NEDUNCHEZHIAN Vs. DEPUTY CIT), wherein, the Division Bench affirmed the decision reported in 274 ITR 37 (DR.K.NEDUNCHEZHIAN Vs. DEPUTY CIT), and following the decision of the Apex Court, held that when there is an alternative remedy, ordinarily, writ jurisdiction under Article 226 of the Constitution of India should not be invoked and that the principle applies with greater force to this proceedings.

5. It is stated by the learned senior counsel for the assessee that they had already invoked the appellate jurisdiction.

6. The appellant had preferred petitions for modification of the order passed by us on 27.2.2007 in this appeal, praying that the direction as to the payment of interest at 50% may not be insisted upon. The appellant has filed the petitions in W.A.M.P.Nos.83 and 84 of 2007 and had stated that they had paid a sum of Rs.1 crore. In the circumstances, they have prayed for modification, to permit the appellant to pay the balance of tax referred to in the order dated 27.2.2007 within a period of four weeks from 13.3.2007 and waive the payment of interest, as contained in the order.

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7. Considering the fact that the assessee had paid Rs.1 crore and had expressed its financial difficulty, we modify the order to the extent that the direction to pay 50% of the interest payable, shall stand deleted. It is hereby made clear that the interest payable, as computed in the order of the Assessing Officer, will however be subject to the result in the appeal preferred by the petitioner. The writ appeals are dismissed. Accordingly, W.A.M.P.Nos.83 and 84 of 2007 are ordered and W.A.M.P.Nos.808 and 809 of 2006 are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ksv

To:

The Income Tax Officer
Ward I(1), Pondicherry.

2 cc To Mrs.Anita Sumanth, Advocate, SR.15395.
1 cc To Mr.Pushya Sitaraman, Advocate, SR.15670.

W.A.Nos.380 and 381 of 2006

NSM(CO)
RVL 29.03.2007

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